

Message Text

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ACTION NEA-12

INFO OCT-01 ISO-00 AEC-11 AID-20 CEA-02 CIAE-00 CIEP-02

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INT-08 L-03 NSAE-00 NSC-10 OMB-01 PM-07 RSC-01 SAM-01

SCI-06 SPC-03 SS-20 STR-08 TRSE-00 AGR-20 FRB-02

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SUBJECT: PRICE CLAUSE IN GOP-ESSO FERTILIZER CONTRACT

REF: ISLAMABAD 1898

BEGIN SUMMARY: PRES SWEENEY OF ESSO FERTILIZER BELIEVES TERMS
GOP-ESSO SEPT 1973 CONTRACT CRYSTAL CLEAR AND NO GROUNDS WHAT-
SOEVER FOR GOP ATTEMPT AVOID APIGOVAL KIEA PRICE INCREASE ON
EXCUSE OF "FORCE MAJEUR". HE BELIEVES IMPORTANT EMBASSY TREAT
PRICE INCREASE, IN ACCORDANCE WITH TERMS OF CONTRACT, AS STRICTLY
NON-NEGOTIABLE MATTER WHICH GOP WILL SURELY ACCEPT WHEN MATTER
GOES BEYOND KAZI TO CABINET LEVEL. END SUMMARY.

1. FOLLOWING RECEIPT REFTTEL, DPO SPOKE AT LENGTH ON FEBRUARY 25
WITH ESSO FERTILIZER PRES GEORGE SWEENEY. SWEENEY SAID HE HAD
ALREADY HEARD THAT EAD AND/OR MIN-FINANCE HAD ASKED LAWMIN
WHETHER FORCE MAJEUR CLAUSE IN GOP-ESSO CONTRACT COULD BE USED BY
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GOP TO AVOID THEIR CONTRACTUAL OBLIGATIONS REGARDING UREA PRICE

INCREASE. SWEENEY'S LACK OF SURPRISE CONCERNING LINE OF ACTION
GOP NOW PURSUING IN NO WAY MODIFIED HIS ABSOLUTE CONVICTION THAT
ATTEMPT TO APPLY FORCE MAJEUR CLAUSE WAS "UNIMAGINABLE AND IN-
COMPREHENSIBLE". SWEENEY SAID A RATHER LAME CASE MIGHT CONCEIV-
ABLY HAVE BEEN MADE FOR INVOCATION OF FORCE MAJEUR BY GOP DURING
ECONOMIC AND FINANCIAL CONFUSION FOLLOWING BREAK-OFF OF EAST WING,
BUT THAT UNDER PRESENT CIRCUMSTANCES, AFTER SEPTEMBER 1973
CONTRACT RENEGOTIATION, WITH RECORD PAK EXPORTS LAST YEAR, AND
PRESENT LARGE FOREIGN EXCHANGE RESERVE OF \$468 MILLION, HE SAW NO
REASON WHATSOEVER FOR GOP TO ATTEMPT TO CLAIM THAT IT UNABLE MAKE
PAYMENT FOR UREA ACCORDING TO CONTRACT. SUCH PAYMENT, HE POINTED
OUT, WOULD, IN FACT, COME FROM A REDUCTION IN THE AMOUNT OF THE
"DEVELOPMENT SURCHARGE" WHICH THE GOP PRESENTLY CHARGES ESSO TO
SOP UP DIFFERENCE BETWEEN ESSO'S TRANSFER PRICE OF RS 677 PER TON
AND PRESENT DOMESTIC RETAIL PRICE OF RS 1100 PER TON, RATHER
THAN FROM ANY NET PAYMENT BY GOP TO ESSO. THUS, INCREASE IN ESSO
TRANSFER PRICE TO LEVEL OF RS 854 PER TON REQUIRED BY CONTRACT
PROVISIONS INVOLVED NO POSITIVE ACTION ON PART OF GOP OTHER THAN
ACKNOWLEDGEMENT OF SWEENEY'S JAN 10 LETTER AND ACCEPTANCE OF ITS
CONTENTS.

2. SWEENEY ALSO EMPHASIZED THAT NEW AGREEMENT REACHED BETWEEN
ESSO AND GOP IN SEPTEMBER 1973 ONLY REINFORCED AND MADE MORE CLEAR
ORIGINAL 1964 AGREEMENT WHICH EMBODIED PRINCIPLE OF LINKING UREA
TRANSFER PRICE IN PAKISTAN TO U.S. DOMESTIC PRICE LEVEL. HE SAID
ESSO MUST ASSUME THAT GOP NEGOTIATED NEW IRON-CLAD AGREEMENT,
WHICH REAFFIRMED OLD PRINCIPLE, IN GOOD FAITH AND THAT AGREEMENT
WILL THEREFORE BE HONORED.

3. SWEENEY OBSERVED THIS IS SECOND TIME SECGENFINANCE KAZI HAS
ATTEMPTED SQUIRM OUT OF FIRM CONTRACTUAL OBLIGATIONS WITH ESSO
EVEN THOUGH KAZI HIMSELF HAD PARTICIPATED IN DRAFTING OF NEW
SEPTEMBER 1973 AGREEMENT, AND HAD BEEN TOLD BY SWEENEY AT THAT
TIME THAT U.S. UREA PRICE WAS RISING. SWEENEY COMMENTED THAT SUCH
SQUIRMING IS PROBABLY PART OF JOB WHICH HAS EITHER BEEN ASSIGNED
TO KAZI OR WHICH HE HAS TAKEN ON HIMSELF. HE BELIEVES MORE RE-
SPONSIBLE AND JUDICIOUS OPINIONS WILL PREVAIL WHEN QUESTION OF
CONTRACT FULFILLMENT INEVITABLY COMES UP FOR REVIEW BY ECONOMIC
COMMITTEE OF CABINET OR BY FULL CABINET.

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4. COMMENTING ON BAQAI'S PROFESSED LACK OF COMPREHENSION AS TO
WHY PRICES IN PAKISTAN SHOULD MOVE UP "SIMPLY BECAUSE PRICES HAD
RISEN IN THE USA," SWEENEY SAID THAT IN A CONTROLLED PRICE
ENVIRONMENT SUCH AS EXISTED IN PAKISTAN, THERE CLEARLY HAD TO BE
SOME AGREED METHOD OF FIXING PRICE INCREASES IF FOREIGN INVESTOR
WAS TO SURVIVE. BOTH ESSO AND GOP HAD CHOSEN US UREA PRICE LEVEL
AS A CONSERVATIVE BASIS FOR PRICE ADJUSTMENT, WHICH WAS EASILY
DETERMINED ON BASIS PRICES PUBLISHED IN RECOGNIZED US TRADE

JOURNAL. HE FURTHER POINTED OUT THAT NEW TRANSFER PRICE OF US \$87 PER TON AS DETERMINED BY PRICES FROM "OILB PAINT AND DRUG RE-PORTER" WAS IN FACT MUCH LOWER THAN THE REAL U.S. DOMESTIC PRICE FOR UREA WHICH NOW ABOUT \$150 PER TON AND EVEN LESS THAN WORLD PRICE, WHICH NOW FROM \$200 PER TON. SWEENEY SAID PRINCIPLE OF BASING ESSO'S TRANSFER PRICE ON U.S. PRICE LEVELS NO DIFFERENT FROM GOP'S ACTION IN ALLOWING SOME FIRMS OWNED BY GOP TO SELL THEIR PRODUCT AT IMPORT PARITY (AS IN CASE OF SALE MOLASSES FOR USE BY CHEMICAL FIRMS AT PRICE BASED ON IMPORT EQUIVALENT).

5. SWEENEY MADE ADDITIONAL POINT THAT SETTLEMENT OF SEPT 1973 WAS ONLY A PARTIAL ONE AND THAT GOP HAD AGREED GIVE EXPEDITIOUS CONSIDERATION TO TWO MAJOR UNRESOLVED ISSUES INVOLVING COMPENSATION ON WHICH NO ACTION AT ALL HAS BEEN TAKEN IN LAST FIVE MONTHS. GOP HAD PROMISED EXAMINE ESSO CLAIM CONCERNING RESTORATION OF DIVIDEND FOR 1971 AND ALSO COMPENSATION FOR DIMINUTION OF TAX LOSS CARRY FORWARD CAUSED BY DEVALUATION. SWEENEY WOULD BE INTERESTED IN KNOWING WHEN GOP INTENDS MAKE PROMISED REPLY ON THESE POINTS.

6. IN SUMMING UP SITUATION, SWEENEY POINTED OUT SEPT 1973 AGREEMENT IS SO CLEAR AND SO RECENT AS NOT TO BE NEGOTIABLE IN ANY WAY WHATSOEVER. HE HOPES EMBASSY IN WHATEVER TALKS IT HAS ON SUBJECT WITH GOP WILL DO ITS BEST TO DISSUADE OFFICIALS FROM PRESENT MISGUIDED LINE OF THOUGHT. HE INTENDS TO WRITE TO MIN FINANCE MUBASHIR HASAN WITHIN NEXT FEW DAYS, ENCLOSING COPY OF HIS JAN 10 LETTER TO ADDITIONAL SECY OF INDUSTRIES QUARERHI, EXPRESSING HOPE THAT MATTER WILL BE EXPEDITIOUSLY SETTLED.

7. COMMENT: CONGEN AGREES WITH SWEENEY THAT CLEAR PRICE PROVISION IN NEWLY NEGOTIATED AGREEMENT BETWEEN GOP AND ESSO IN NO WAY A MATTER SUBJECT TO RENEGOTIATION OR RECONSIDERATION, AND THAT THE LONGER GOP TAKES IN COMING TO CONCLUSION THAT THEY WILL HAVE TO ABIDE BY ITS TERMS, THE MORE THE CLIMATE FOR FURTHER US NNVEST-LIMITED OFFICIAL USE

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MENT IN PAKISTAN COULD DETERIORATE. IF GOP PROCRASTINATES TOO LONG, WE ALSO BELIEVE THERE NO DOUBT THAT ESSO WILL TAKE ITS CASE

TO HIGHER LEVELS IN USG, ALTHOUGH COMPANY WOULD NOT LIKE TO TAKE SUCH ACTION UNLESS IT FEELS IT HAS NO OTHER ALTERNATIVE.

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